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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ARMANDO VILLANUEVA and
HORTENCIA SAINZ, individually and
successor in interest to Pedro
Villanueva, deceased and FRANCISCO
OROZCO, individually,

Plaintiffs,

v.

STATE OF CALIFORNIA; JOHN
CLEVELAND; RICHARD
HENDERSON, and DOES 1-10,
inclusive,

Defendants.

Case No. 8:17-cv-01302-JLS-KES

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
EXCLUDE EXPERT TESTIMONY;
DECLARATION OF D. BRYAN
GARCIA IN SUPPORT THEREOF**

Date: September 3, 2021

Time: 1:30 p.m.

Dept.: 10A – 10th Floor

Judge: Hon. Josephine L. Staton

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

In this civil rights case, Plaintiffs Francisco Orozco, Armando Villanueva and Hortencia Sainz (“Plaintiffs”) seek damages against Defendants Sergeant Jon Cleveland, Officer Rich Henderson (“Officer Defendants”), and the State of California, by and through the California Highway Patrol (collectively “Defendants”) because the Officer Defendants needlessly and unjustifiably fired fourteen (14) rounds into Pedro Villanueva’s (“Decedent”) Chevrolet Silverado (“Silverado”), killing Mr. Villanueva and severely injuring his passenger, Plaintiff Mr. Orozco.

To assist the jury, Plaintiffs have retained Accident Reconstruction Expert, Edward C. Fatzinger; Ballistics Expert, David E. Balash; and Police Practices Expert, Scott A. DeFoe (collectively “Plaintiffs’ Experts”). Each of Plaintiffs’ Experts’ opinions draw from their substantial knowledge, experience, and expertise in their respective fields, as well as the facts and evidence in the present case.¹ The opinions offered by Plaintiffs’ Experts are reliable, and will assist the jury in understanding the facts and issues in this case. Plaintiffs’ Experts have met the inquiry into the admissibility of their respective opinions, and Plaintiffs’ Experts should be allowed to give their respective opinions to the jury. The Ninth Circuit’s liberal application of the 702 and 703 requirements favors admission. Here, although Defendants may not like the opinions offered by Plaintiffs’ Experts, their scattershot critiques all go to the weight of the evidence, rather than admissibility. Defendants are free to cross-examine Plaintiffs’ Experts on their opinions. However they have provided no basis to exclude any of Plaintiffs’ experts or testimony at trial.

¹ It is significant that Defendants’ Motion makes no argument that Plaintiffs’ experts are not qualified in each of their respective areas of expertise – as Plaintiffs’ experts are more than qualified. *See*, Copies of Plaintiffs’ Experts’ C.V.’s attached hereto as Ex. “1”, “2”, and “3” to Declaration of Bryan Garcia (“Garcia Decl.”).

Accident Reconstruction Expert Edward C. Fatzinger

Defendants have moved to exclude some of Mr. Fatzinger's opinions relating to (1) the speed of Plaintiffs' Silverado; (2) the potential amount of time it took for the Silverado to move from the parked Honda to the time it made contact with the Defendants' undercover CHP vehicle; and (3) and the potential travel path that the Silverado took from the parked Honda to the time it collided with the CHP's undercover vehicle.

There is no video of this shooting, as the Officer Defendants did not have body worn cameras, and their undercover CHP vehicle did not have MVARs equipment. Also, there is no event data recorder (aka "black box") information from the Silverado regarding the speed and/or direction of the Silverado in the moments before the Officer Defendants opened fire. The only evidence upon which Mr. Fatzinger can rely is the witness testimony and physical evidence in this case. In reaching his opinions, Mr. Fatzinger considered all witness testimony in this case, examined the physical evidence, and conducted his own analysis and simulation of the events. Mr. Fatzinger has met the inquiry into the admissibility of his opinions, and he should be allowed to give those opinions to the jury.

Ballistics Expert, David E. Balash:

Defendants attempt to exclude Mr. Balash's testimony as to (a) the location of Sgt. Cleveland (*i.e.* on the passenger side of the Silverado) when the Officer Defendants fired their respective shots, as well as (b) the speed/travel path of the Silverado at the time the Officer Defendants' shots were fired.

Physical evidence does not lie. In the present case, the physical evidence confirms that Sgt. Cleveland was on the passenger side of the Silverado (*i.e.* not in the path of the Silverado) when his two shots were fired through the passenger window. Defendants' own ballistics expert agrees that Sgt. Cleveland was on the passenger side of the Silverado when his two shots were fired. As such, the location of Sgt. Cleveland at the time he fired his two shots is beyond dispute. Moreover, as it

1 relates to the location of Sgt. Cleveland when Ofc. Henderson fired his twelve (12)
2 shots, the evidence and testimony in this case confirms Sgt. Cleveland was out of the
3 path of the Silverado when Ofc. Henderson's shots were fired. As it relates to the
4 likely travel path of the Silverado, Mr. Balash relied on the accident reconstruction
5 performed by Edward Fatzinger as foundation for his ultimate ballistic opinions,
6 which he is entitled to do. As such, Mr. Balash meets the inquiry into the admissibility
7 of his opinions subject to any cross-examination or rebuttal as Defendants see fit.

8 **Police Practices Expert, Scott A. DeFoe:**

9 Defendants' Motion also attempts to exclude the opinions of Plaintiffs' police
10 practices expert, Scott A. DeFoe, because Mr. DeFoe relies on CHP policies and
11 training materials as foundation for his opinions. Contrary to Defendants' claims, Mr.
12 DeFoe's reference to various police policies are relevant to Plaintiffs' excessive force
13 and negligence causes of action, and each of the policies referenced by Mr. DeFoe is
14 directly relevant to the facts of the present case. Although Defendants may not agree
15 with Mr. DeFoe's opinions, he has met the inquiry into the admissibility of his
16 opinions, and Defendants are free to challenge any of Mr. DeFoe opinions on cross-
17 examination.

18 Plaintiffs respectfully request that this Court deny Defendants' Motion in its
19 entirety. In the event that the Court is inclined to grant Defendants' Motion, Plaintiffs
20 respectfully request a *Daubert* hearing so as to properly permit the parties and the
21 Court to examine Mr. Fatzinger, Mr. Balash, and Mr. DeFoe as to their qualifications,
22 and bases, for their respective opinions on these issues.

23 **II. FACTUAL BACKGROUND**

24 The present case involves an unreasonable and unjustified shooting by the
25 Officer Defendants. On the evening of Sunday July 3, 2016, Pedro Villanueva was
26 driving his father's red Chevrolet Silverado, with Mr. Orozco as his passenger. That
27 same evening, the Officer Defendants were part of a CHP taskforce that was charged
28 with breaking up "sideshow" activities – the informal exhibition of cars and trucks,

1 usually involving vehicles performing “donuts.”

2 The Officer Defendants were in an unmarked black Ford Taurus with tinted
3 windows, which allowed them to approach the sideshows undetected, and conduct
4 surveillance.² If the Officer Defendants identified potential traffic violators, CHP
5 policies and procedures required that they call in uniformed officers in marked black
6 and white police vehicles, since it was these uniformed officers (not the undercover
7 Officer Defendants) who were charged with the responsibility of conducting traffic
8 stops, pursuing potential violators, issuing citations and/or making arrests.

9 At around 10:30 p.m. on July 3, 2016, the Officer Defendants arrived at the
10 Santa Fe Springs Swap Meet parking lot – a large, open and flat parking lot. At that
11 time, the parking lot was occupied by approximately 20 vehicles – 18 of which were
12 parked, and 2 of which were performing “donuts” in the otherwise empty lot. As they
13 approached the parking lot, the Officer Defendants saw the Silverado doing “donuts.”³
14 Rather than calling for marked black and white vehicles to conduct the traffic stop,
15 the Officer Defendants unilaterally decided to conduct a traffic stop of the Silverado
16 by themselves in their unmarked vehicle, thereby violating CHP Policy.

17 The Officer Defendants followed the Silverado on side streets for nearly 5
18 miles. During most of this time, the lights and sirens of the undercover CHP vehicle
19 were off (*i.e.* not activated). As the Officer Defendants followed the Silverado down
20 Pritchard Avenue (“Pritchard”), the Officer Defendants did not have either their lights
21 or sirens activated, and at no point did the Officer Defendants utilize their P.A. System
22

23 ² The Officer Defendants were in an undercover vehicle which was not equipped
24 with an MVARs/video system, police markings, or overhead police lights.

25 ³ This was the first time the Officer Defendants saw the Silverado. The Officer
26 Defendants never ran the license plate of the Silverado – which was owned and
27 registered to Pedro Villanueva’s father – and never had an opportunity to identify
28 Pedro Villanueva as the driver at any point until after the shooting. As such, the only
basis for pursuing Mr. Villanueva was for the “donuts” observed in the empty Santa
Fe Springs Swap Meet parking lot.

1 on their undercover CHP vehicle.

2 Given that Pritchard was a dead-end street, the Silverado began to reverse out
3 of MacArthur to make a three-point turn to face southbound onto Pritchard. The
4 Silverado reversed in a straight manner (*i.e.* not an “S” turn).⁴ The Silverado was
5 approximately 15 to 20 feet away from the undercover CHP vehicle at this point in
6 time.

7 Although Ofc. Henderson claims to have yelled “police” as well as commands
8 to the Silverado driver to show his hands, witnesses testified that they did not hear
9 “police” verbalized before shots were fired. A witness thought Decedent and Mr.
10 Orozco were being “jacked,” or robbed, and multiple witnesses heard Ofc. Henderson
11 yell “stop motherfucker” before the shooting.

12 The Silverado had not moved, or only moved a little bit before shots were fired.
13 As the Silverado approached, Sgt. Cleveland fired 2 shots through the passenger
14 window of the Silverado, one of which struck the driver, Decedent, Pedro Villanueva.
15 Ofc. Henderson fired because he thought Sgt. Cleveland was in the path of the
16 Silverado, although he admitted that he did not know Sgt. Cleveland’s location during
17 any of his 12 shots. Ofc. Henderson aimed and shot where he thought the driver to be
18 as he fired his 12 shots.

19 The Silverado slowed down, and came to rest against the undercover CHP
20 vehicle. Decedent died from his wounds, and Mr. Orozco was severely injured after
21 being struck by a bullet.

22 **III. LEGAL STANDARD**

23 “Federal Rule of Evidence 702 allows admission of ‘scientific, technical, or
24 other specialized knowledge’ by a qualified expert if it will ‘help the trier of fact to
25 understand the evidence or to determine a fact in issue.’” *FTC v. Qualcomm Inc.*, No.

26
27 ⁴ As the Silverado did so, the undercover CHP vehicle was parked on the southwest
28 corner of Pritchard and Mac Arthur Avenue.

1 17-CV-00220-LHK, 2018 U.S. Dist. LEXIS 212243, at *8 (N.D. Cal. Dec. 17, 2018)
2 (quoting Fed. R. Evid. 702). “Expert testimony is admissible pursuant to Rule 702 if
3 it is both relevant and reliable.” *Id.* (quoting *Daubert v. Merrell Dow Pharms., Inc.*,
4 509 U.S. 579, 589 (1993)). “Because of the fluid and contextual nature of the inquiry,
5 district courts are vested with ‘broad latitude’ to ‘decid[e] how to test an expert’s
6 reliability’ and ‘whether or not [an] expert’s relevant testimony is reliable.’”
7 *Id.* (quoting *Murray v. S. Route Maritime SA*, 870 F.3d 915, 922 (9th Cir. 2017).

8 “Moreover, the inquiry into admissibility of expert opinion is a “flexible one,”
9 where “[s]haky but admissible evidence is to be attacked by cross examination,
10 contrary evidence, and attention to the burden of proof, not exclusion.” *Primiano v.*
11 *Cook*, 598 F.3d 558, 564 (9th Cir. 2010) (citing *Daubert*, 509 U.S. at 594, 596). “Under
12 *Daubert*, the district judge is ‘a gatekeeper, not a fact finder.’ When an expert meets
13 the threshold established by Rule 702 as explained in *Daubert*, the expert may testify
14 and the jury decides how much weight to give that testimony.” *Id.* (quoting *United*
15 *States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006)); *FTC v. Qualcomm*
16 *Inc.*, No. 17-CV-00220-LHK, 2018 U.S. Dist. LEXIS 212243, at *10 (N.D. Cal. Dec.
17 17, 2018).

18 IV. DISCUSSION

19 A. Mr. Fatzinger’s Opinions Regarding the Speed/Time/Travel Path of 20 the Silverado Are Scientifically Sound, Reliable, and Are Supported by the Evidence in this Case

21 Mr. Fatzinger has reviewed the relevant evidence in this case, as he has
22 reviewed the depositions of all the witnesses to this unjustified shooting, has inspected
23 the Silverado, has conducted research on the Silverado’s turning radius and idle speed,
24 and has conducted accident reconstruction analysis through PC-Crash. *See* Garcia
25 Decl., Ex. “4” (Fatzinger Expert Report) and “5” (Fatzinger Declaration). As such,
26 Mr. Fatzinger’s opinions meet the requirements set forth in Rules 702 and 703, and
27 his testimony should be allowed. Although Defendants may not agree with Mr.
28 Fatzinger’s opinions, any disagreement as to Mr. Fatzinger’s opinions are more

properly addressed via contradictory evidence or cross-examination, not exclusion.

a. Ample Evidence Exists to Support Mr. Fatzinger's Opinion That the Silverado was Moving at a Speed of 3-5 Miles Per Hour

Ample evidence exists to support Mr. Fatzinger's opinion that the Silverado was travelling at a speed of 3 to 5 miles per hour, including the following:

- Plaintiff Orozco testified that the Silverado was only travelling at no more than 5 miles per hour. Garcia Decl., Ex. "6" (F. Orozco Dep. Tr. 78:16-23);
- Ofc. Henderson testified that the Silverado was approaching at less than 10 miles per hour. Garcia Decl., Ex. "7" (Ofc. Henderson Dep. Tr. 60:22-25);
- Witness Hinkle testified that the Silverado was not moving before shots were fired. Garcia Decl., Ex. "8" (Hinkle Dep. Tr. 24:17-26:2).
- Witness Hinkle testified that the Silverado never accelerated toward the CHP vehicle in any threatening way before the shooting. *Id.* at 21:6-9;
- Witness Mendez testified that he never heard the Silverado "rev" its engine or squeal its tires, and never saw anything that the Silverado was never accelerating towards the CHP vehicle. Garcia Decl., Ex. "9" (Mendez Dep. Tr. 22:-14);
- Witness Estrada confirms that there were no sounds of accelerating toward the CHP vehicle. Garcia Decl., Ex. "10" (Estrada Dep. Tr. 13:2-11); and
- A test of a similar model Silverado, Mr. Fatzinger documented the idle speed of the Silverado at 4.2 miles per hour. Garcia Decl., Ex. "11" (Fatzinger Dep. Tr. at 25:2-10);

Mr. Fatzinger utilized his expertise and skill in performing calculations and accident reconstruction utilizing PC-Crash to arrive at his opinions. *Id.* at 20:4-21:3. Accordingly, it is abundantly clear that Mr. Fatzinger's opinions are not speculative, and any disagreement as to the conclusions reached by Mr. Fatzinger should be addressed by cross-examination, not exclusion.

b. Ample Evidence Exists to Support Mr. Fatzinger's Opinion that the Silverado Took 16 Seconds from the Time the Silverado Struck the Parked Honda to the Time it Collided with the CHP Vehicle

Mr. Fatzinger has an ample basis for support his opinion that it took 16-17 seconds for the Silverado to travel from the Honda to the time it collided with the undercover CHP vehicle.⁵ In deposition, Mr. Fatzinger testified that in reaching this opinion, he relied on the testimony of Sgt. Cleveland and Ofc. Henderson for the manner in which the Silverado reversed, as well as the travel path of the Silverado as drawn by Sgt. Cleveland, which confirms the Silverado reversed in a straight direction (*i.e.* not an “S” turn as proffered by Defendants). *Id.* at 37:21-38:15).



Garcia Decl., Ex. 12 (Cleveland Dep., Ex. 6)

Based on the straight reverse travel path of the Silverado, and in analyzing the turning radius of the Silverado as indicated by the relevant GM manuals, Mr. Fatzinger determined that the Silverado could not make the turn toward its ultimate location of rest in one turn. As such, Mr. Fatzinger concluded that two turning movements were required for the Silverado to reach its point of rest.⁶

After considering this evidence, Mr. Fatzinger utilized the Silverado

⁵ Again, it should be noted that there is no video of this incident as the undercover CHP vehicle was not equipped with an MVARs system, and the undercover Officer Defendants did not have body cameras. The only evidence which is available is independent witness testimony, physical evidence, etc.

⁶ Independent witness Thomas Hinkle and Plaintiff Orozco also supported Mr. Fatzinger's opinions in this regard. *Id.* at 50:5-51:1.

1 manufacturer's specifications for the idle speed of the Silverado. Garcia Decl., Ex.
2 "11" at 25:17-20; 25:5-11. Based on this travel path, idle speed and turning radius for
3 the Silverado, Mr. Fatzinger utilized his expertise and skill, as well as accident
4 reconstruction software of PC-Crash, to arrive at his opinions. *Id.* at 20:4-21:3. It was
5 through this consideration of the evidence, and analysis, that Mr. Fatzinger was able
6 to arrive at his opinion as to the amount of time that it took for the Silverado to make
7 contact with the undercover CHP vehicle. As such, Mr. Fatzinger's opinion in this
8 regard is sufficiently reliable.

9 c. Mr. Fatzinger's Opinions regarding the "Likely" Travel
10 Path of the Silverado is Based on the Fact That There Is No
11 Video Evidence of This Shooting, and Mr. Fatzinger's
Opinions are Amply Supported by the Evidence in this Case

12 Defendants claim that the direction of travel of the Silverado is not accurate
13 because Mr. Fatzinger opines as to the "likely" travel path of the Silverado. As is
14 undisputed here, no video captured the travel path of the Silverado. As such, Mr.
15 Fatzinger's opinion in this regard is based on the testimony of the witnesses in this
16 case, the physical evidence, and his extensive experience in the field of accident
17 reconstruction. Specifically,

- 18 • Sgt. Cleveland testified that the Silverado reversed in a straight
19 manner (not an "S" turn) and impacted a parked vehicle. Garcia
Decl., Ex. "12" at 87:4-7;
- 20 • The photograph of the Silverado as depicted by Sgt. Cleveland
21 confirms that the Silverado did not make an "S" turn;
- 22 • Independent Witness Hinkle testified that the Silverado reversed,
23 pulled forward, reversed and then pulled forward again. Garcia
Decl., Ex. "8" at 34:13-35:2; and
- 24 • Plaintiff Orozco testified that Decedent, wanted to do a "K" turn.
Garcia Decl., Ex. "6" at 66:17-19.

25 Taking this testimony, combined with the totality of the evidence reviewed,
26 Mr. Fatzinger arrived at his opinion as to the likely travel path of the Silverado. *Id.* at
27 37:21-38:15; 39:9-25. Taken all together, it is clear that Mr. Fatzinger's opinions and
28 testimony are sufficiently relevant and reliable under the federal rules.

B. Plaintiffs' Ballistic Expert, David Balash's Opinions are Based on Reliable Methods and Evidence, and Therefore are Admissible

Plaintiffs' ballistics expert, David E. Balash's opinions meet the requirements of Rules 702 and 703 as they are adequately based on the facts and evidence of this case, as well as his skill, experience, training and education. Garcia Decl., Ex. "13" (Balash Expert Report) and "14" (Balash Declaration).

1. The Undisputed Evidence Confirms that Sgt. Cleveland Was on the Passenger Side of the Silverado When He Fired His Two Shots

David Balash has offered the opinion that Sgt. Cleveland was on the passenger side of the Silverado (i.e. not in the Silverado's path) when he fired his 2 shots through the passenger window of the Silverado. In rendering this opinion, Mr. Balash has examined extensive evidence in this case, including physically inspecting the Silverado (and the resulting bullet holes), as well as reviewing the investigation performed by the CHP which determined that after entering through the passenger side of the Silverado, one of Sgt. Cleveland's bullets struck the driver, Decedent Villanueva, in the right chest area. Garcia Decl., Exhibit "15" (CHP Officer Involved Shooting Investigation). Mr. Balash also considered the grouping of Sgt. Cleveland's shell casings, which were in close proximity to one another.

Based on this evidence, Mr. Balash concluded that Sgt. Cleveland was stationary (i.e. not running for his life) and not running when he fired his shots. Garcia Decl., Ex. "16" (Balash Dep. Tr. 74:8-23). The fact that Sgt. Cleveland was out of the path of the Silverado when he fired his 2 shots is undisputed as Defendants' Ballistic Expert, Rocky Edwards testified as follows:

Q. So Sergeant Cleveland would obviously have to be in a position when he fired the shots such that his shots would have been able to come through the passenger side window, and we know at least one of them struck Mr. Villanueva?

A. Correct.

Q. So that would generally put Sergeant Cleveland on the passenger side of the truck when he fired?

A. Exactly.

1 Garcia Decl., Exhibit “17” (Edwards Dep. Tr. 31:9-17).

2 Mr. Balash’s opinions in this regard are sufficiently based on the evidence in
3 this case, and are directly relevant to Plaintiffs’ claims that Sgt. Cleveland’s shots
4 were unreasonable and unjustified.

5 2. Mr. Balash’s Opinion that Sgt. Cleveland Was Not in the Path of
6 the Silverado When Ofc. Henderson Fired is Supported by the
7 Evidence in this Case

8 Mr. Balash’s opinion that Sgt. Cleveland was not in the path of the Silverado
9 when Ofc. Henderson fired his shots is supported by the facts and evidence in this
10 case. Specifically,

- 11 • Sgt. Cleveland testified that he started “jogging” toward the west
12 curblin of the street as soon as the Silverado started moving
13 forward, and it only took a couple of seconds for him to get to the
14 curblin. Garcia Decl., Ex. “12” at 98:20-99:12; and
- 15 • Ofc. Henderson testified that that the Silverado had moved 15-30
16 feet forward before he fired his first shot. *See*, Garcia Decl., Ex.
17 “7” at 41:10-23.

18 Consequently, it is abundantly clear that Mr. Balash has adequate foundation
19 for his opinions in this regard, and these opinions are directly relevant to Plaintiffs’
20 claims that Sgt. Cleveland’s shots were unreasonable and unjustified.

21 3. Mr. Balash is Entitled to Rely on Plaintiff’s Accident
22 Reconstruction Expert as to the Speed of the Silverado

23 It is well established that experts may rely upon the opinions of other experts.
24 *See*, Fed. R. Evid. 703; *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420
25 YGR, 2017 U.S. Dist. LEXIS 57340, at *71 (N.D. Cal. Apr. 12, 2017) *DataQuill Ltd.*
26 *v. High Tech Computer Corp.*, 887 F. Supp. 2d 999, 1026 (S.D. Cal. 2011) (“It is
27 routine and proper for a damages expert in a technical patent case to rely on a technical
28 expert for background.”); *United States v. 1014.16 Acres of Land, More or Less,*
Situated in Vernon Cnty., State of Mo., 558 F. Supp. 1238, 1242 (W.D. Mo.
1983) *aff’d*, 739 F.2d 1371 (8th Cir. 1984) (reasonable to expect that experts will rely
on the opinion of experts in other fields as background material, as permitted by FRE

703); *Interwoven, Inc. v. Vertical Computer Sys.*, CV 10-04645 RS, 2013 U.S. Dist. LEXIS 100790, 2013 WL 3786633, at *7 (N.D. Cal. July 18, 2013) (“Experts are, however, permitted to rely on hearsay evidence in coming to their conclusions, so long as an expert in the field would reasonably rely on that information”).

Mr. Balash does not intend on offering his own, independent analysis of the speed of the Silverado. Rather, Mr. Balash bases his opinions, in part, on the opinions expressed by Plaintiff’s accident reconstruction expert, which is entitled to do.

4. Mr. Balash Does Not Intend On Offering Opinions as to What the Officer Defendants Perceived in the Moments of this Unjustified Shooting

Contrary to Defendants assertion to this Court, Mr. Balash is not a human factors expert, and does not intend on offering any opinion as to what the Officer Defendants purportedly perceived during the events of the Officer Defendants’ unjustified shooting. Accordingly, Defendants’ contention in this regard is moot.

C. **Mr. DeFoe’s Opinions are Based on Reliable Matters, Are Not Speculative or Contrary to the Evidence in this Case, And Should Be Allowed**

Scott DeFoe is Plaintiffs’ police practices expert. In arriving at his ultimate opinions in this case, Mr. DeFoe considered CHP’s policies, Police Officer Standard Training (“POST”) standards, as well as voluminous amount of evidence in rendering his opinions. Garcia Decl., Ex. “18” (DeFoe Expert Report) and “19” (DeFoe Declaration).

1. Contrary to Defendants’ Assertions, Each of Mr. DeFoe’s Opinions are Admissible and Relevant to Plaintiffs’ Causes of Action

a. *Mr. DeFoe Is Entitled to Rely and Comment on CHP and POST Training Policies As Relevant to Plaintiffs Excessive Force and Negligence Claims*

Contrary to Defendants representations to the Court, Mr. DeFoe’s reliance on CHP and POST training is relevant to both Plaintiffs’ excessive force and negligence claims for the reasons set forth below.

1) *Police Practices and Procedures are Relevant to*

Plaintiffs' Excessive Force Claims

In *Lombardo v. City of St. Louis*, 141 S. Ct. 2230 (June 28, 2021), the United States Supreme Court has recently confirmed that police policies are relevant in considering claims of excessive force. Specifically, the United States Supreme Court in *Lombardo* stated, in relevant part:

In assessing a claim of excessive force, courts ask “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Graham v. Connor*, [**612] 490 U. S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). “A court (judge or jury) cannot apply this standard mechanically.” *Kingsley v. Hendrickson*, 576 U. S. 389, 397, 135 S. Ct. 2466, 192 L. Ed. 2d 416 (2015). Rather, the inquiry “requires careful attention to the facts and circumstances of each particular case.” *Graham*, 490 U. S., at 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443. Those circumstances include “the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff’s injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.” *Kingsley*, 576 U. S., at 397, 135 S. Ct. 2466, 192 L. Ed. 2d 416. . . .

Lombardo, 141 S. Ct. at 2241 (Emphasis Added).

In applying the law to the facts of that case, the Supreme Court made it abundantly clear in *Lombardo* that police training and policies are relevant to the appropriate Fourth Amendment law analysis. *Id.* The Ninth Circuit has also held that CHP and POST training materials are relevant to an excessive force claim, and whether an officer’s actions were objectively reasonable. *Aquino v. Monterey Sheriff’s Dept.* 2018 U.S. Dist. LEXIS 115675, at *2 (N.D. Cal. July 10, 2018) (denying Motion in Limine to Exclude P.O.S.T. Standards). Moreover, internal police guidelines may be relevant in determining whether use of force is objectively reasonable in an excessive force claim. *Scott v. Henrick* 39 F. 3d 912, 915 (9th Cir. 1994). Specifically, the Scott court stated:

Assuming internal police guidelines are relevant to determining whether use of force is objectively reasonable, [citations omitted], they are relevant only

1 when one of their purposes is to protect the individual
2 against whom force is used. Thus, if a police department
3 limits the use of chokeholds to protect suspects from being
4 fatally injured, [citations omitted], or restricts the use of
5 deadly force to protect suspects from being shot
unnecessarily, [citations omitted], such regulations are
germane to the reasonableness inquiry in an excessive
force claim.

6 Scott v. Henrich, 39 F.3d 912, 915-16 (9th Cir. 1994)

7 Accordingly, it is abundantly clear that Mr. DeFoe is entitled to refer to, and
8 rely upon, police training in opining as to whether the force used by the Officer
9 Defendants was excessive.

10 2) *Police Policies are Relevant to Plaintiffs' Negligence*
11 *Claim*

12 Under California negligence law, “a plaintiff must show that a defendant had a
13 duty to use due care, that he breached that duty, and that the breach was the proximate
14 cause of the resulting injury.” *Tabares v. City of Huntington Beach*, 988 F. 3d 1119,
15 1125 (2020) quoting *Hayes v. County of San Diego*, 305 P. 3d 252, 255 (2013).
16 “[O]fficers have a duty to act reasonably when using deadly force. *Hayes, supra* at
17 255 citing *Munoz v. Olin*, 24 Cal. 3d 629, 634(1979) . The reasonableness of an
18 officer’s conduct is determined in light of the totality of the circumstances. *Id.* citing
19 *Grudt v. City of Los Angeles*, 2 Cal. 3d 575(1970). Under California law, the officer’s
20 unreasonable pre-shooting decisions can render his behavior unreasonable under the
21 totality of the circumstances, even if his use of deadly force at the moment of shooting
22 might be reasonable in isolation. *Tabares, supra* at 1125.

23 b. *The Policies Referenced by Mr. DeFoe are Relevant to this*
24 *Case*

25 All of the policies refenced by Mr. DeFoe are germane to the facts of the present
26 case, and thus Mr. DeFoe should be allowed as they are relevant to Plaintiffs’ claims,
27 and Defendants are free to cross-examine Mr. DeFoe on these policies at trial.

28 c. *An Expert May Refer to the Law in Expressing an Opinion*

The Ninth Circuit has recognized that “[a]lthough the value of expert testimony

lies in the specialized knowledge that an expert brings to bear on an issue in dispute... it is sometimes impossible for an expert to render his or her opinion on a subject without resorting to language that recurs in the applicable legal standard.” *Navarro v. Hamilton*, 2017 U.S. Dist. LEXIS 38266, at *6 (C.D. Cal., Mar. 15, 2017) citing *United States v. Diaz*, 876 F.3d 1194, 1198 (9th Cir. 2017). “Accordingly, at times, an expert may refer to the law in expressing an opinion without that reference rendering the testimony inadmissible. Indeed, a witness may properly be called upon to aid the [trier of fact] in understanding the facts in evidence even though reference to those facts is couched in legal terms.” *Navarro*, 2017 U.S. Dist. LEXIS 14193, at *6 (citing *Hangerter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004)). Mr. DeFoe does not intend on offering opinions as to the ultimate legal issues in a case. That said, Mr. DeFoe is entitled to refer to the law as doing so provides foundation for his opinions, and will be helpful to the jury.

2. Each of Mr. DeFoe’s Opinions are Proper and Are Amply Supported by the Evidence in Record

As more fully set forth below, each of Mr. DeFoe’s opinions which are being attacked by Defendants are relevant, appropriate and are amply supported by the evidence in this case.

a. *The Evidence Confirms that the Officer Defendants Were Not Responding to a Serious Crime (Point #1)*

The evidence in this case confirms that the Officer Defendants were not responding to a serious crime. Specifically, Sgt. Cleveland testified that he originally approached the Silverado because it was doing “donuts” in the open, flat parking lot of the Santa Fe Springs Swap Meet. *See*, Ex. “12” at 43:8-44:19. The Dispatcher, Nekaya Cornelison, who received the call from the Officer Defendants testified that the Officer Defendants’ original call was a result of “street racing.” Garcia Decl., Ex. “20” (Cornelison Dep. Tr. 15:6-16). Street racing is usually a misdemeanor, thus not a serious crime.

Ms. Cornelison also testified that the Officer Defendants relayed to her that they were “Attempting to Overtake” the Silverado, which indicates that the Officer Defendants were attempting to catch up to a vehicle that was exceeding the speed limit. *Id.* at 16:3-25. Further, dispatch received no request to change the status of the call from the Officer Defendants until after the shooting, which occurred six minutes later. *Id.* at 18:4-14; 39:18-25. Accordingly, there is ample evidence to support Mr. DeFoe’s opinion that the Officer Defendants were not responding to a serious crime when they initially made contact with the Silverado, and Mr. DeFoe’s opinion in this regard is relevant in relation to the excessive force and negligence claims against Defendants.

b. *The Evidence Confirms that CHP Officers are Taught That Firearms Can Only Be Discharged Upon a “Reasonable Belief” that Deadly Force Must Be Used (Defense Point #2)*

The evidence in this case supports Mr. DeFoe’s opinion that deadly force is only justified on the basis of an “objectively reasonable” officer. CHP’s own policy on Discharge of Firearms states that an officer may only discharge a firearm when:

the officer has a reasonable belief that the use of deadly force is necessary for self-defense or to defend another person from immediate serious bodily harm.

Garcia Decl., Ex. “21” (CHP Policy on Discharge of Firearms).

The CHP’s Use of Force policies and procedures then define term “objectively reasonable.” Garcia Decl., Ex. “22” (CHP Policy on Use of Force). Defendants own police practices expert, Clarence Chapman, agrees that subjective fear alone is insufficient to justify use of force, including the use of deadly force. Garcia Decl., Ex. “23” (Chapman Dep. Tr. 23:10-18). Moreover, it appears that if the jury accepts Plaintiffs’ contentions as true, Defendant Henderson would agree that his actions were not objectively reasonable as he testified as follows:

Q. If hypothetically -- again, I'm giving you another hypothetically -- you knew that your partner was out of the path of the vehicle, would you have shot if you had known that?

1 A. Are you asking me if I knew for a fact that my
2 partner was not in jeopardy and not in the threat of
3 a moving vehicle that was accelerating towards
4 him if I would have fired my weapon?

5 Q. That's my question.

6 A. No, I would not have.

7 Q. And why not based on your training?

8 A. ***Because it's immoral, illegal, and against
9 policy.***

10 Garcia Decl., Ex. "7" (Henderson Dep. Tr. 57:10-22) (emphasis added).

11 The relevant training policies are relevant to Plaintiffs' claims as confirmed by
12 the evidence, including the testimony of Ofc. Henderson and Defendants' police
13 practices expert, Clarence Chapman. As such, Mr. DeFoe should be allowed to
14 express these opinions as they will be helpful to the jury.

15 c. *The Evidence Confirms that CHP Policies Discourages
16 Shooting at Moving Vehicles (Defense Point #3)*

17 Mr. DeFoe's opinion that police policies discourage shooting at moving
18 vehicles is also grounded in the evidence in this case, and is relevant to Plaintiffs'
19 causes of action for excessive force and negligence. Specifically, CHP policy
20 mandates that "Officers shall not stand and/or step directly in front of or directly
21 behind a vehicle in an attempt to impede its movement (prevent escape)..." Garcia
22 Decl., Ex. "21". CHP policy also teaches that shooting at a moving vehicle could
23 disable the driver. Garcia Decl., Ex. "12" at 117:14-22; 118:20-25. Ofc. Henderson
24 testified that he was trained not to shoot at a vehicle merely because it was moving in
25 direction of a person. Garcia Decl., Ex. "7" at 13:8-11. Defendants' police practices
26 expert, Clarence Chapman agrees that policy discourages shooting at moving vehicle
27 unless the vehicle poses an immediate threat. Garcia Decl., Ex. "23" at 29:19-
28 23:30:25. The fact that policy discourages shooting at moving vehicles will provide
assistance to the jury in considering the facts of whether this shooting was unjustified.

d. *DeFoe Decl. 13-16 (Defense Point #4)*

Paragraph 13 of Mr. DeFoe's Declaration states that per basic training, officers
should not place themselves or remain in the path of a moving vehicle. This opinion

1 is supported by CHP's policies, as well as the testimony of the Officer Defendants
2 themselves. Moreover, as it relates to the remainder of Mr. DeFoe's opinions, these
3 issues have been amply addressed in sections 4.c and e herein.

4 e. *Police Training Teaches Deadly Force Should Not Be Used*
5 *Against Motor Vehicle (Defense Point #5)*

6 As more fully set forth above in section 4.c, police training policies discourage
7 shooting at moving vehicles. Moreover, Sgt. Cleveland also agrees that officers are
8 trained not to stand in front of or behind vehicle trying to leave scene; should try to
9 get out of way of vehicle; and if the officer is in a position of risk, he or she should
10 get out of the way of the vehicle. *See e.g.* Garcia Decl., Ex. "12" (Cleveland Dep. Tr.
11 at 96:8-17; 96:22-25; and 101:13-17).

12 Sgt. Cleveland was never in a position of risk as he testified that he was
13 "jogging" to the west curb line (*i.e.* not running for his life). Garcia Decl., Ex. "12" at
14 109:5-14. Sgt. Cleveland also testified that never had to dive out of the way; never
15 fell to the ground; and did not have any physical injury as he "jogged" away. *Id.* at
16 107:1-7. Because Sgt. Cleveland was not in the path of the Silverado during any of
17 the shots, he was never about to be struck by the Silverado. *Id.* at. 98:25-99:5; *see*
18 *also*, Garcia Decl., Ex. "14" (Balash Decl.) at ¶¶ 9-12; Ex. "24" (Orozco Decl.) at ¶¶
19 23-25. This policy is relevant to the facts of the present case, and provide support for
20 Plaintiffs' claims that this shooting was both unreasonable and unjustified.

21 f. *The Evidence Confirms that Decedent Pedro Villanueva*
22 *Became Incapacitated by the Officer Defendants' Shots*
Causing the Silverado to Strike the Undercover CHP
Vehicle (Defense Point #6)

23 The evidence in this case also supports Mr. DeFoe's opinion that Mr.
24 Villanueva became incapacitated by the Officer Defendants' shots. Specifically, Ofc.
25 Henderson fired twelve shots, all of which were fired before the Silverado impacted
26 the CHP vehicle. Garcia Decl., Ex. "7" at 13:12-15; 15:23-25. It was 1 to 5 seconds
27 after Ofc. Henderson fired 12 shots that Silverado impacted CHP vehicle. *Id.* at 16:11-
28 15. Ofc. Henderson testified that he was trying to strike the driver of the Silverado.

1 *Id.* at 49:2-4.⁷ After he fired his shots, Ofc. Henderson reloaded his weapon – at this
2 point the vehicle was slowing down and coasting to rest against the CHP vehicle. *Id.*
3 at 74:7-16. Witness testimony confirms that Decedent, Pedro Villanueva laid to the
4 side after being hit by the shots. Garcia Decl., Ex. “8” at 29:10-21. As such, the
5 evidence amply supports the position that Decedent became incapacitated as a result
6 him being shot by the Officer Defendants, causing him to lose control of the
7 Silverado.

8 g. *Officers Cannot Justify Shooting at a Moving Vehicle*
9 *Simply Because Fleeing (Defense Point #7)*

10 Defendants’ police practices expert agrees that officers cannot justify shooting
11 at a moving vehicle which is fleeing. Garcia Decl., Ex. “23” at 25:23-26:4. The
12 evidence confirms that there was more than enough space for the Silverado to travel
13 down Pritchard without striking the CHP vehicle, and it appeared the Silverado was
14 intending to pass the undercover CHP vehicle. Garcia Decl., Ex. “24” at ¶24.
15 Accordingly, opinions and/or references to policies that it is not proper to shoot at
16 vehicles which are fleeing are both relevant, and admissible.

17 h. *The Evidence Supports Mr. DeFoe’s Opinion that Sgt.*
18 *Cleveland and Ofc. Henderson Should Have Known that a*
19 *Front Seat Passenger Occupied the Silverado (Defense*
Point #8)

20 It is abundantly clear that the evidence supports Mr. DeFoe’s opinion that the
21 Officer Defendants should have known that Mr. Orozco occupied the passenger seat
22 of the Silverado. Specifically, an independent witness knew there was a passenger in
23 the Silverado. Garcia Decl., Ex. “8” at 29:10-12. The headlights were on the
24 undercover CHP vehicle were activated. *Id.* at 71:20-22. Moreover, Sgt. Cleveland’s
25 weapon had a flashlight, which he was using at the time of the shooting. Garcia Decl.,
26 _____

27 ⁷ The OCCL determined that Ofc. Henderson’s shots struck Decedent, Pedro
28 Villanueva in the head and clavicle. Garcia Decl., Ex. “15”.

1 Ex. “12” at 31:15-19; 91:7-21. Cleveland’s shots went through the passenger window,
2 and he was looking at the passenger side of the truck. *Id.* at 71:3-5; 90:14-17. After
3 the shooting, the Officer Defendants were able to observe a passenger in the
4 Silverado. *Id.* at 121:16-21; *see also*, Garcia Decl., Ex. “7” at 75:5-10. Accordingly,
5 there is ample evidence to support Mr. DeFoe’s position that the Officer Defendants
6 should have known that there was a passenger in the front passenger seat of the
7 Silverado at the time of the shooting. This opinion is relevant to Defendants’ pre-
8 shooting tactics, and the unreasonable nature of this shooting.

9 i. *The Officer Defendants Pre-Shooting Tactics (i.e. Failure*
10 *to Establish Cover and Contact Officers) Should Be*
11 *Allowed (Defense Point #9) and The Officer Defendants’*
Pre-Shooting Tactics in Failing to Establish Tactical Plan
Should be Allowed (Defense Point #10)

12 As more fully set forth above, Mr. DeFoe’s opinions regarding the pre-shooting
13 tactics of the Officer Defendants is relevant to Plaintiffs’ excessive force and
14 negligence claims. While Defendants may dislike any such opinions, Mr. DeFoe
15 should be allowed to express those opinions at trial where they are more properly
16 addressed by rebuttal, not exclusion.

17 j. *The Officer Defendants Violated Policy When They*
18 *Conducted A Stop in Unmarked Vehicle (Defense Point*
#11)

19 Defendants claim that “Mr. DeFoe does not cite any CHP policy that prohibits
20 a sworn peace officer in an unmarked vehicle and in plain clothes from conducting a
21 stop (because there is no such policy).” *See* Motion at 9:19-25. However, Defendants
22 fail to fully cite Mr. DeFoe’s Declaration, which references CHP HPM 70.6, (CHP-
23 01832-1833) which states, in relevant part, that “a marked black and white vehicle,
24 other than a motorcycle should take over a pursuit from an unmarked vehicle or
25 Specially Marked Patrol Vehicle. Garcia Decl., Ex. “18” at ¶23. This policy also states
26 that ‘when practical, a marked black and white patrol vehicle with overhead
27 emergency lights shall take over the pursuit from a patrol vehicle equipped with only
28 a red spotlight or red spotlight/center mounted light combination.’” *Id.* at ¶23. Also,

1 Sgt. Zavala testified that it was the policy for black and white vehicles, not undercover
2 vehicles, to conduct traffic stops for this CHP detail. Garcia Decl., Ex. “25” (Zavala
3 Dep. Tr. 16:11-17:4; 21:7-9; and 18:16-19:2). This evidence is relevant to the Officer
4 Defendants’ pre-shooting tactics, as well as the unreasonable nature of the shooting.

5 k. *It is Undisputed that CHP are Trained to Give a Warning*
6 *Before Using Deadly Force if Time Allows (Defense Point*
7 *#12)*

8 It is well established that whenever practicable, a warning must be given before
9 deadly force is employed, as a failure to warn before using deadly force could be
10 unreasonable, unless impracticable. *Tabares v. City of Huntington Beach, supra* at
11 1129 (citing *Harris v. Roderick*, 126 F. 3d 1189, 1201 (9thCir. 1997)). CHP policy
12 states that “the officer should give an audible warning, if feasible, prior to utilizing
13 deadly force in an apprehension situation.” Garcia Decl., Ex. “21” (CHP Policy on
14 Discharge of Firearms Policy at CHP-1800). Moreover, Defendants’ police practices
15 expert agrees POST trains that warning should be given, if feasible, before deadly
16 force is used. Garcia Decl., Ex. “23” at 22:23-23:3. Here, witnesses testified that the
17 Officer Defendants never gave a warning and, as such, this policy is relevant to the
18 facts of this case.

19 l. *The Officer Defendants’ Pre-Shooting Tactics in the Officer*
20 *Defendants’ Failure to Use the Public Address System in*
21 *their Vehicle is Relevant and Should be Allowed (Defense*
22 *Point #13)*

23 It is undisputed that the Officer Defendants never used the Public Address
24 (“PA”) system on their undercover CHP vehicle. Garcia Decl., Ex. “12” at 76:1-13.
25 This evidence is relevant to the Officer Defendants’ deficiencies in their pre-shooting
26 tactics, and should be allowed.

27 m. *The Officer Defendants’ Pre-Shooting Tactics in Failing to*
28 *Give Plaintiffs Time to Comply With their Commands is*
Relevant and Should be Allowed (Defense Point #14)

As stated above, the Officer Defendants were trained to give a warning to
comply if time allowed. Both Cleveland and Henderson failed to give a warning to

1 Plaintiffs that they were going to use deadly force. Garcia Decl., Ex. “26” (Henderson
2 Interview Transcript) at CHP 01052; *see also*, Garcia Decl. Ex. “7” at 36:4-16, 58:24-
3 59:8; Ex. “12” at 117:11-13. Moreover, witnesses testified that the Officer Defendants
4 never verbally identified themselves as officers. Garcia Decl., Ex. “9” at 23:22-25,
5 31:11-14; *see also*, Garcia Decl. Ex. “27” (A. Orozco Dep. Tr. 15:18-16:2). In fact,
6 one witness thought that the passengers in the Chevrolet Silverado were being
7 “jacked” by the individuals in the dark sedan. *Id.* at 35:5-16. Mr. DeFoe’s opinion is
8 relevant to allow the jury to consider the unreasonable nature of the Officer
9 Defendants actions, and should be allowed.

10
11 n. *The Officer Defendants Unprofessional and Callous
Attitude When they Used Profanity (Defense Point #15)*

12 Mr. DeFoe’s opinions as to the attitude utilized by the Officer Defendants in
13 this regard is relevant to the pre-shooting tactics which they used. Mr. DeFoe’s
14 opinions in this regard should not be excluded, and Defendants will have the
15 opportunity to cross-examine Mr. DeFoe on these opinions at trial.

16 o. *Bullet Point 16 is a Repetition of Prior Arguments*

17 As Defendants’ Motion concedes, bullet point 16 addresses the statements of
18 Scott DeFoe in paragraph 29 of his Declaration, which is a repetition of arguments
19 addressed above. As such, Plaintiffs would direct the Court to Plaintiffs’ arguments
20 already made herein.

21 3. Mr. DeFoe is Entitled to Generally Speak to the Travel Path of the
22 Silverado, as it Provides Foundation for his Ultimate Opinions

23 Mr. DeFoe’s opinions regarding the general travel path of the Silverado are
24 based on his review of the evidence, as well as the accident reconstruction performed
25 by Mr. Fatzinger. The law allows Mr. DeFoe to discuss the travel path/speed of the
26 Silverado as this provides foundation for his opinions.

27 ///

28 ///

KIESEL LAW LLP
Attorneys at Law
Beverly Hills, California

1 **V. EXCLUDING PLAINTIFFS' EXPERTS' OPINIONS WOULD**
2 **PREJUDICE PLAINTIFFS.**

3 Excluding Plaintiffs' experts' opinions would be unfair and prejudicial to
4 Plaintiffs. Defendants have retained their own experts in accident reconstruction,
5 ballistics, and police practices, and Plaintiffs are entitled to present expert testimony
6 to rebut Defendants' expert testimony on the issue. If the Court is inclined to grant
7 Defendants' motion, the same ruling should apply equally to Defendants' experts.

8 **VI. IN THE ALTERNATIVE, PLAINTIFFS REQUEST A HEARING ON**
9 **PLAINTIFFS' EXPERTS QUALIFICATIONS PRIOR TO GRANTING**
10 **DEFENDANTS' MOTION**

11 In the event the Court is inclined to grant Defendants' motion, Plaintiffs
12 request a hearing so that the parties and the court can sufficiently examine Messrs.
13 Fatzinger, Balash and Defoe as to their qualifications and foundation on these
14 issues. If the Court is inclined to grant this motion without a hearing, then Plaintiffs
15 respectfully request that Defendants' motion be granted on a narrowly tailored basis,
16 excluding only those portions of Plaintiffs' experts' opinions that Defendants take
17 issue with.

18 **VII. CONCLUSION**

19 Based on the foregoing, Plaintiffs respectfully request that the Court deny
20 Defendants' Motion in its entirety. Alternatively, Plaintiff's request a hearing on
21 Plaintiffs' Experts qualifications prior to granting Defendants' Motion.

22 DATED: August 13, 2021

KIESEL LAW LLP

23
24
25 By: /s/ D. Bryan Garcia

Paul R. Kiesel

D. Bryan Garcia

Ashley M. Conlogue

26
27
28 Attorneys for Plaintiffs

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DATED: August 13, 2021

LAW OFFICES OF DALE K. GALIPO

By: /s/ Dale K. Galipo
Dale K. Galipo
Renee V. Masongsong

Attorneys for Plaintiff
Francisco Orozco

DECLARATION OF D. BRYAN GARCIA

I, D. Bryan Garcia, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice before all Court in the State of California and the United States District Court for the Northern, Central and Southern Districts of California. I am a partner with Kiesel Law LLP, counsel for Plaintiffs, Armando Villanueva and Hortencia Sainz in the above-captioned action.

2. This Declaration is offered in support of Plaintiffs' Opposition to Defendants Motion to Exclude Expert Testimony. If called upon as a witness, I could and would competently testify to the following based on personal knowledge.

3. The parties met and conferred as it relates to the documents marked Confidential by the Defendants which were to be attached to the present Motion. Defense counsel indicated that Plaintiffs' counsel could file the Exhibits to this Motion without filing the documents under seal.

4. Attached hereto as Exhibit "1" is a true and correct copy of the Curriculum Vitae of Edward C. Fatzinger, Jr., M.S., P.E.

5. Attached hereto as Exhibit "2" is a true and correct copy of the Curriculum Vitae of David E. Balash.

6. Attached hereto as Exhibit "3" is a true and correct copy of the Curriculum Vitae of Scott A. DeFoe.

7. Attached hereto as Exhibit "4" is a true and correct copy of the Federal Rule of Civil Procedure ("FRCP") Rule 26 Report of Edward C. Fatzinger, Jr., M.S., P.E.

8. Attached hereto as Exhibit "5" is a true and correct copy of the Declaration of Edward C. Fatzinger, Jr., M.S., P.E. in Support of Plaintiffs' Opposition to Defendants Motion for Summary Judgment [D.E. 46].

9. Attached hereto as Exhibit "6" is a true and correct copy of portions of the Deposition Testimony of Plaintiff Francisco Orozco.

10. Attached hereto as Exhibit "7" is a true and correct copy of portions of

1 the Deposition Testimony of Defendant Officer Rich Henderson.

2 11. Attached hereto as Exhibit “8” is a true and correct copy of portions of
3 the Deposition Testimony of Thomas Hinkle.

4 12. Attached hereto as Exhibit “9” is a true and correct copy of portions of
5 the Deposition Testimony of Lino Mendez.

6 13. Attached hereto as Exhibit “10” is a true and correct copy of portions of
7 the Deposition Testimony of Augustine Estrada.

8 14. Attached hereto as Exhibit “11” is a true and correct copy of portions of
9 the Deposition Testimony of Edward C. Fatzinger, Jr., M.S., P.E.

10 15. Attached hereto as Exhibit “12” is a true and correct copy of portions of
11 the Deposition Testimony of Defendant Sergeant Jon Cleveland.

12 16. Attached hereto as Exhibit “13” is a true and correct copy of the FRCP
13 Rule 26 Report of David E. Balash.

14 17. Attached hereto as Exhibit “14” is a true and correct copy of the
15 Declaration of David E. Balash in Support of Plaintiffs’ Opposition to Defendants’
16 Motion for Summary Judgment.

17 18. Attached hereto as Exhibit “15” is a true and correct copy of portions of
18 the Officer Involved Shooting Investigation.

19 19. Attached hereto as Exhibit “16” is a true and correct copy of portions of
20 the Deposition Testimony of David E. Balash.

21 20. Attached hereto as Exhibit “17” is a true and correct copy of portions of
22 the Deposition Testimony of Rocky Edwards.

23 21. Attached hereto as Exhibit “18” is a true and correct copy of the FRCP
24 Rule 26 Report of Scott A. DeFoe.

25 22. Attached hereto as Exhibit “19” is a true and correct copy of the
26 Declaration of Scott A. DeFoe in Support of Plaintiffs’ Opposition to Defendants’
27 Motion for Summery Judgment.

28 23. Attached hereto as Exhibit “20” is a true and correct copy of portions of

KIESEL LAW LLP
Attorneys at Law
Beverly Hills, California

1 the Deposition Testimony of Nekaya D. Cornelison.

2 24. Attached hereto as Exhibit “21” is a true and correct copy of portions of
3 the CHP Policy on Use of Firearms.

4 25. Attached hereto as Exhibit “22” is a true and correct copy of portions of
5 the CHP Policy on Use of Force.

6 26. Attached hereto as Exhibit “23” is a true and correct copy of portions of
7 the Deposition Testimony of Clarence Chapman.

8 27. Attached hereto as Exhibit “24” is a true and correct copy of the
9 Declaration of Francisco Orozco in Support of Plaintiff’s Opposition to Defendants’
10 Motion for Summary Judgment.

11 28. Attached hereto as Exhibit “25” is a true and correct copy of portions of
12 the Deposition Testimony of Sergeant Richard Zavala.

13 29. Attached hereto as Exhibit “26” is a true and correct copy of portions of
14 the Interview of Rich Henderson.

15 30. Attached hereto as Exhibit “27” is a true and correct copy of portions of
16 the Deposition Testimony of Abel Orozco.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 Executed on August 13, 2021, at Beverly Hills, California.

20
21 /s/ D. Bryan Garcia

22 D. Bryan Garcia
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